

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MONOLITHIC POWER SYSTEMS, INC.,

Plaintiff,

v.

02 MICRO INTERNATIONAL LIMITED,

Defendant.

No. C 08-4567 CW

ORDER GRANTING
MPS' MOTION FOR
ATTORNEYS' FEES
AND NON-TAXABLE
COSTS

02 MICRO INTERNATIONAL LIMITED,

Counterclaimant,

v.

MONOLITHIC POWER SYSTEMS, INC.;
ASUSTEK COMPUTER INC.; ASUSTEK
COMPUTER INTERNATIONAL AMERICA;
BENQ CORPORATION; AND BENQ AMERICA
CORP.,

Counterclaim-Defendants

Plaintiffs and Counterclaim-Defendants Monolithic Power
Systems, Inc., Asustek Computer and ASUS Computer International
(together, MPS) have recalculated their attorneys' fees request in
accordance with the Court's January 17, 2012 Order. Defendant and
Counterclaimant 02 Micro International Limited (02 Micro) has
filed a response and MPS has filed a reply. The matter was taken

1 under submission on the papers. Having read all the papers filed
2 by the parties, the Court approves MPS' recalculation of its
3 attorneys' fees and awards attorneys' fees in the amount of
4 \$8,419,429 and non-taxable costs in the amount of \$663,151.

5 BACKGROUND

6 In its January 17, 2012 Order Regarding Attorneys' Fees and
7 Non-Taxable Costs, the Court granted MPS' request for non-taxable
8 costs in the amount of \$663,151 and ordered MPS to recalculate its
9 attorneys' fees request in accordance with the Court's
10 determination. The Order (1) limited the recovery of fees for the
11 legal services of the Finnegan firm to \$4,000,000 for work done
12 after March 2009, in accordance with a fee cap agreement between
13 Finnegan and MPS; (2) limited the recovery for fees corresponding
14 to block-billed time entries to twenty-five percent of those fees;
15 and (3) granted MPS leave to file an additional fee application
16 for work done in preparation of the fee application.
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MPS recalculated its fee request as follows:

Fees generated by the Fish and Richardson (FR) firm	\$ 281,162
Fees generated by the Latham firm	\$3,455,333
Fees generated by the Finnegan firm prior to the March 2009 fee cap agreement	\$ 339,899
Fees generated by the Finnegan firm after the March 2009 fee cap agreement	\$4,000,000
Fees generated in preparing attorneys' fees application	\$ 343,035
Total Attorneys' Fees	\$8,419,429 ¹
Non-taxable costs	\$ 663,151
Total Fees and Non-taxable Costs Request	\$9,082,580

MPS clarifies that all fees requested have been discounted by ten percent, as was assumed by the Court in the January 17, 2012 Order. MPS documents the recalculated amounts with new spreadsheets of billing records for the Finnegan and Latham firms adhering to the Court's instructions in the January 17, 2012 Order. MPS has separated its billing records into work performed by the Finnegan firm and work performed by the Latham firm, including the work performed in preparing the fee application. The billing records show that Finnegan provided \$6,445,862 in legal services after March 2009, but, in keeping with the Court's directive, MPS is calculating reimbursement of \$4,000,000. MPS

¹ MPS indicates that the subtotal is \$8,423,129. This appears to be an error; the Court calculates the subtotal to be \$8,419,429.

1 has also provided a separate category for all the block-billed
2 time entries it previously identified and, in keeping with the
3 Court's directive, has calculated reimbursement of twenty-five
4 percent of the total amount. MPS explains that the new reports
5 "reflect the specific rates assigned to each time keeper at the
6 time each entry was made. (The rates on the original spreadsheet,
7 and therefore on the initial reports, reflected billing rates for
8 each particular individual that were the result of averaging the
9 individual's rates for 2009 and 2010)."

11 MPS also requests an award of interest at the legal rate on
12 the amount of \$9,082,580 from March 3, 2011, the day the Court
13 granted its motion for attorneys' fees pursuant to 35 U.S.C.
14 § 285. 02 Micro objects on several grounds to MPS' re-calculation
15 of its fees.

17 DISCUSSION

18 I. Finnegan's Fees for Preparation of Fee Application

19 02 Micro objects to the \$249,834 for services performed by
20 Finnegan in preparing the fee application. 02 Micro argues that
21 this Court has held that recovery of work performed by Finnegan is
22 limited to the \$4,000,000 fee cap negotiated between the parties
23 on the ground that it would be inequitable to require 02 Micro to
24 pay MPS more in fees than MPS paid to Finnegan. MPS responds that
25 Finnegan's fees for preparing the fee application were incurred
26 after dismissal of the 02 Micro infringement claims and, thus,
27 were not covered by the fee cap. See Supplemental Declaration of
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1 Finnegan partner, Scott Mosko, at ¶ 3. MPS also asserts that it
2 has paid the \$249,834 to Finnegan for its work on the fee
3 application. Id. In its January 17, 2012 Order, the Court
4 allowed MPS to submit an additional request for fees incurred in
5 the preparation of its attorneys' fees application and did not
6 limit the fee request to work performed by Latham. Thus, an award
7 of these fees will not require 02 Micro to pay MPS more than MPS
8 has paid to Finnegan. Therefore, 02 Micro's objection to the
9 \$249,834 for Finnegan's work in preparing the fee application is
10 overruled.

11 II. Different Billing Rates

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13 02 Micro objects to the fact that MPS has altered its
14 attorneys' billing rates to "reflect the specific rate assigned to
15 each time keeper at the time each entry was made." 02 Micro
16 points out that the Court did not require MPS to revisit the issue
17 of reasonable attorney billing rates and only instructed MPS to
18 recalculate its fee request based on the hours allowed or
19 disallowed. 02 Micro suggests that, to remedy this, all billing
20 entries associated with MPS' recalculation be reduced by two
21 percent, which amounts to \$69,107, or that MPS be required to
22 resubmit its billing entries using the previous rates.

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24 MPS indicates that it used the actual rates in this fee
25 application "to provide the Court with an even more exact
26 accounting." MPS explains that the net effect of using the actual
27 billing rates for the years 2009 and 2010, rather than the blended
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1 rates that it used in its original fee application, was to reduce
2 the fees requested by \$6,207.

3 The Court did not require MPS to change the rates billed by
4 each attorney. However, because the change in the billing rates
5 is minor, it represents a more accurate picture of the attorneys'
6 rates and it results in a reduction of total fees requested, the
7 Court concludes that any further reduction is not warranted.
8 Therefore, 02 Micro's objection to the change in billing rates is
9 overruled.
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11 III. Unreasonable Hours in Preparing Fee Application

12 02 Micro objects to the "unreasonably high number of hours"
13 expended in preparing the fee application and requests a twenty-
14 five percent reduction of fees requested for work performed by
15 Latham.² This argument is without merit. As acknowledged by 02
16 Micro, the Court denied its previous request for a reduction in
17 fees for preparing the fee application. The fees incurred in
18 preparing the fee application were reasonable and necessary in
19 light of the fact that Latham and Finnegan were required to
20 review, analyze and summarize two years of extensive billing
21 records. Therefore, 02 Micro's objection to the number of hours
22 expended in preparing the fee application is overruled.
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27 ² As noted above, 02 Micro objects to all the fees requested
28 for the work performed by Finnegan.

1 IV. Accrual of Post-Judgment Interest

2 02 Micro argues that MPS is not entitled to an award of
3 interest from March 3, 2011, the day the Court granted MPS' motion
4 for attorneys' fees, because the fees had not been quantified at
5 that time. Citing 28 U.S.C. § 1961(a), which provides that post-
6 judgment interest accrues from the date of entry of judgment, 02
7 Micro argues that interest cannot accrue until the Court enters
8 judgment as to the fee amount. 02 Micro also cites Special
9 Devices, Inc. v. OEA, Inc., 269 F.3d 1340, 1343 (Fed. Cir. 2001),
10 for the proposition that there is no final judgment regarding a
11 fee award until the district court enters judgment as to the
12 amount of fees.
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14 Special Devices is inapplicable here. It addressed the
15 question of whether an unquantified award of attorneys' fees
16 pursuant to 35 U.S.C. § 285 is final for purposes of conferring
17 jurisdiction on the Federal Circuit. Id. at 1343. It did not
18 address when interest begins to accrue on an award of attorneys'
19 fees.
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21 Under 28 U.S.C. § 1961(a), interest is allowed on money
22 judgments in civil cases recovered in a district court accruing
23 "from the date of the entry of the judgment." Courts have
24 interpreted this to mean that post-judgment interest is calculated
25 "from the date of the judgment establishing the right to the
26 award." Takeda Chem. Indus. Ltd. v. Mylab Labs., Inc., 2007 WL
27 840368, *14 (S.D.N.Y.) (attorneys' fees award under § 285); Mathis
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1 v. Spears, 857 F.2d 749, 769 (Fed. Cir. 1988) (same); Friend v.
2 Kolodzieczak, 72 F.3d 1386, 1391-92 (9th Cir. 1995) (on attorneys'
3 fee award under 42 U.S.C. § 1988, post-judgment interest accrues
4 from date entitlement to fees is secured, rather than from date
5 exact quantity of fees is set).

6 Thus, MPS is entitled to post-judgment interest on its award
7 of attorneys' fees and non-taxable costs accruing from March 3,
8 2011, the date the Court issued its order determining MPS'
9 entitlement to such an award. This amount does not include the
10 \$343,035 in attorneys' fees subsequently incurred in the
11 preparation of the fee application, which shall accrue interest
12 commencing on the date of this Order. Interest is to be
13 calculated at the legal rate as set forth in 28 U.S.C. § 1961(a).

14 V. 02 Micro's Objection to Non-taxable Costs
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16 In its January 17, 2012 Order, the Court stated that 02 Micro
17 had not objected to MPS' request for non-taxable costs. 02 Micro
18 clarifies that it objected to non-taxable costs and cites to page
19 eleven in its opposition to MPS' May 5, 2011 submission
20 documenting fees and costs, in which 02 Micro stated, "The court
21 has previously ruled that discovery costs not solely related to
22 the ITC investigation are recoverable. 02 disagrees and preserves
23 its objection for appeal, but even without challenging that
24 decision, it is clear that fees related to work on issues that
25 were in no way part of this case should not be awarded." 02 Micro
26 also points to a footnote on the same page in which it stated, "02
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1 also separately objects to any ITC Discovery costs incurred before
2 this Court entered the order allowing parties to use ITC discovery
3 in this case. Until that order issued, the parties' discovery
4 efforts could not have been considered to be related to this case.
5 Those costs total \$341,100.05."

6 The Court acknowledges that 02 Micro objects to MPS' request
7 for non-taxable costs, but overrules the objection.
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9 VI. Payment of Taxable Costs

10 MPS indicates that 02 Micro has not paid the \$339,315 that
11 was taxed as costs by the Court and requests that the Court order
12 02 Micro to pay this amount with interest accruing from March 3,
13 2011, the day the Court ordered 02 Micro to remit \$339,315 in
14 taxable costs forthwith. 02 Micro does not respond to this
15 request. Therefore, the Court orders 02 Micro immediately to pay
16 the \$339,315 in costs previously taxed by the Court, with interest
17 at the legal rate accruing from March 3, 2011.
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19 CONCLUSION

20 For the foregoing reasons, the Court awards attorneys' fees
21 in the amount of \$8,419,429 and non-taxable costs in the amount of
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1 \$663,151, with interest accruing as set forth in this Order. A
2 separate judgment shall be entered by the Clerk of the Court.

3 IT IS SO ORDERED.

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5 Dated: 5/3/2012

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7 CLAUDIA WILKEN
8 United States District Judge
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